

**United States Department of Labor
Employees' Compensation Appeals Board**

M.W., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
NORTH CHICAGO VETERANS)
ADMINISTRATION MEDICAL CENTER,)
North Chicago, IL, Employer)

Docket No. 08-1143
Issued: October 3, 2008

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 10, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated January 8, 2008. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue on appeal is whether appellant has met her burden of proof in establishing that she sustained a traumatic injury in the performance of duty.

FACTUAL HISTORY

On November 20, 2007 appellant, then a 50-year-old psychiatric nursing assistant, filed a traumatic injury claim alleging that, on November 6, 2007, she was struck while trying to restrain a patient and sustained injuries to her face and neck. She stopped work on November 6, 2007 and did not return.

By letter dated November 30, 2007, the Office asked appellant to submit additional information including a comprehensive medical report from her treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to her claimed injury. No additional evidence was received.

In a decision dated January 8, 2008, the Office denied appellant's claim and noted that, although the evidence supports that the events occurred as alleged, the medical evidence did not support that appellant sustained any diagnosed condition causally related to those factors.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.¹

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.² The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.³

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁴ The weight of medical evidence is determined by its reliability, its

¹ *Gary J. Watling*, 52 ECAB 357 (2001).

² *Michael E. Smith*, 50 ECAB 313 (1999).

³ *Id.*

⁴ *Leslie C. Moore*, 52 ECAB 132 (2000).

probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁵

ANALYSIS

Appellant alleged that, on November 6, 2007, she was struck while trying to restrain a patient and sustained injuries to her face and neck. The Board initially notes that there is no dispute that the incident occurred on November 6, 2007 as alleged.

The Board finds, however, that there is no medical evidence submitted to establish that appellant sustained a cheek and neck injury causally related to her employment duties. In a letter dated November 30, 2007, the Office requested that appellant submit additional evidence in support of her claim, specifically a comprehensive medical report from her treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had caused her claimed injury. However, no medical evidence was submitted prior to the Office's decision of January 8, 2008.

As noted, part of appellant's burden of proof includes the submission of rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship between the employment incident and the diagnosed condition. The record contains no medical evidence. Because appellant has not submitted a reasoned medical opinion explaining how and why her cheek and neck injury was employment related, she has not met her burden of proof.

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.⁶ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his or her condition was caused, precipitated or aggravated by his or her employment is sufficient to establish causal relationship.⁷

⁵ *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

⁶ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁷ *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).

CONCLUSION

The Board therefore finds that appellant failed to meet her burden of proof in establishing that she sustained an employment-related injury in the performance of duty.⁸

ORDER

IT IS HEREBY ORDERED THAT the January 8, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 3, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

⁸ Following the Office's January 8, 2008 decision, appellant submitted additional evidence to the Office. She also submitted this evidence to the Board on appeal. As the Office did not consider this evidence in reaching a final decision, the Board may not review the evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).